

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition No. 5882 of 2001 (M/S)  
(Old CMWP No. 18956 of 1985)**

Balbir Singh (since deceased) son of Panna Lal, substituted by his  
L.R. 1. Munesh Gupta,  
2. Naveen Gupta, sons of Balbir Singh, residents of 22 Pass Road,  
Tehri Dam Colony Rishikesh, Dehradun.

**..... Petitioners.**

**Versus**

1. The District Judge, Dehradun.
2. The Prescribed Authority, Rishikesh (under U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972).
3. D.F.O. District Dehradun.

**... Respondents.**

**Sri Sharad Sharma assisted by Ms. Prabha Noliyal, learned counsel for the petitioners.**

**Sri Gopal Narain Srivastava, Brief Holder for the State-respondents**

**Dated May 02, 2007.**

**Hon'ble B.S. Verma, J.**

The petitioners have prayed for issue a writ, order or direction in the nature of certiorari quashing the orders dated 18-11-1985 passed by the respondent no.1 and the order dated 23-3-1982 passed by the respondent no.2 respectively. By the order-dated 23.3.1982 the Prescribed Authority had passed the order of eviction against the petitioner and to pay damages to the Forest Department as mentioned in the impugned order. By the order dated 18-11-1985, the District Judge, Dehradun dismissed the appeal preferred under Section 9 of the U.P. Act No. 22 of 1972 as barred by time.

Relevant facts giving rise to the present writ petition are that proceedings under Section 4 of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act 1972 were initiated by the Prescribed Authority against the deceased petitioner Balbir Singh on the complaint may by the Divisional Forest Officer alleging therein that the petitioner has been in illegal occupation of the forest land for about one year seven months, therefore, he be

evicted and be ordered to pay damages for illegal use and occupation of the forest land. The opposite-party Balbir Singh filed objection and asserted that the notice under Section 4 of the Act is illegal. He alleged to be in occupation since 1971 on monthly rent of Rs. 100/- and he has paid Rs. 200/- to the forest depart on 14-5-1979. Both the parties led evidence before the Prescribed Authority. After hearing both the parties, the Prescribed Authority did not find favour with the petitioner Balbir Singh and passed the order of eviction against him vide order dated 23.3.1982.

Aggrieved, the petitioner Balbir Singh preferred appeal before the District Judge Dehradun. Along with the appeal, the petitioner filed application for condonation of delay under Section 5 of the Limitation Act (paper no. 7-C) dated 18-5-1983. The learned appellate court rejected the application under Section 5 of the Limitation Act on the ground that sufficient cause could not be shown to condone the delay in filing the appeal. Accordingly, the appeal has been dismissed as barred by time vide order dated 18-11-1985.

Admittedly, the impugned order of eviction was passed by the Prescribed Authority on 23.3.1982. In the affidavit filed by the petitioner Balbir Singh it was alleged that the application for obtaining the copy of the order was made by the appellant-petitioner but the clerk concerned for one reason or the other did not prepare the copy. The applicant being an illiterate person, he was not able to get the certified copy before 11<sup>th</sup> May, 1983. The application for obtaining copy was moved on 7-3-1983 and the copy was read for delivery on 11.4.1983. It is not disputed that the limitation for filing the appeal is fifteen days. The appeal was filed by the petitioner Balbir Singh on 18-5-1983 which was registered as Misc. Case No. 83 of 1983 Balbir Gupta Vs. D.F.O.

Learned counsel for the petitioners have submitted that the period of limitation for filing the appeal has to be reckoned from the date of publication of order under sub-section (1) of Section of the Act, therefore, the impugned order passed by the District Judge Dehradun is not tenable because the order under Section 5(1) was never published by the Prescribed Authority, hence the limitation had not expired till the date when the appeal was filed.

The Apex Court in the case of *Apangshu Mohan Lodh and Others Vs. State of Tripura and Others [(2004) 1 Supreme Court Cases, 119]* has held that the power for condonation of delay is discretionary power of the Court and it has to be liberally construed. Having considered the circumstances of the present case, I am convinced that it is a fit case in which the delay in filing the appeal ought to have been condoned and the appeal under Section 9 of the Act be decided on merit by the District Judge.

Accordingly, the writ petition is hereby allowed. Costs easy. The application under Section 5 Limitation Act (paper no. 7-C) moved in Misc. Case No. 83 of 1983 Balbir Gupta Vs. D.F.O. is allowed. The impugned order dated 18-11-1985 passed by the District Judge Dehradun is set aside and the delay in filing the appeal is condoned. The District Judge after admitting the appeal shall proceed to decide the same on merit after hearing both the parties expeditiously, preferably within a period of four months from the date of production of certified copy of this order. Till the decision of the appeal, the interim order dated 16-12-1985 passed by the Allahabad High Court shall continue. Both the parties shall appear before the District Judge, Dehradun on **28-5-2007**.

All applications stand disposed of.

**(B.S. Verma, J.)**